

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MISSOURI**

**Proposed Revision to Rule 3070-1 and Creation of Rule 3094-1**

**Rule 3070-1. Chapter 13 Direct Payments is amended to read:**

**Rule 3070-1. Chapter 13 Direct Payments**

All payments must be through the Chapter 13 trustee unless the Court orders or the trustee agrees otherwise, except debtors may pay directly: 1) Unmodified payments on a note secured by real property **when the debtor is current on the date of the petition**; 2) on-going support obligations pursuant to a court decree; ~~and~~ 3) lease payments upon which the debtor has assumed the underlying lease; **and 4) payments under a contract for deed upon which the debtor has assumed the underlying executory contract.**

**Rule 3094-1. Payments on Real Property is created to read:**

**Rule 3094-1. Payments on Real Property**

1. Leases. The debtor shall pay directly to the lessor all payments scheduled in a lease for that portion of the obligation which comes due after the order for relief. The debtor shall pay directly to the lessor all payments required to cure a pre-petition arrearage.
2. Contracts for Deed. The debtor shall pay directly to the holder of the contract for deed all payments scheduled in the contract for that portion of the order which comes due after the order for relief. The debtor shall pay directly to the lessor all payments required to cure a pre-petition arrearage.
3. Mortgages.
  - A. Unmodified Payments on a note secured by real estate when the debtor is current on the date of petition. The debtor may make the post-petition payments directly to the mortgagee.
  - B. Unmodified Payment on a note secured by real estate when the debtor is delinquent on the date of petition.
    1. The debtor shall make the post-petition payments to the mortgagee through the Chapter 13 trustee as part of the plan payment. Absent evidence to the contrary it is presumed that the plan is not feasible unless the debtor pays the post-petition payments through the trustee. Parties may introduce evidence on a case-by-case basis to demonstrate the feasibility of direct payments including the ability to maintain proper records of the transactions.
    - i. The trustee shall load in the trustee's database the monthly payment set out in the plan for the post-petition monthly payments.
    - ii. If the mortgagee thinks that payment is incorrect it shall either
      1. Object to the confirmation of the plan; or

2. File a “Notice of Payment Change.” See below.

2. Local Rule 3086-1 is modified to authorize the Chapter 13 trustee to release post-petition mortgage payments, which the plan proposes to be paid through the trustee, pre-confirmation to the mortgagee in the ordinary course of the trustee’s business as funds become available for distribution. The trustee shall not release any payments until a proof of claim is filed.

3. In order to synchronize the debtor’s Chapter 13 plan payments with the post-petition, on-going mortgage payments and not adversely affect other claimants with “equal monthly amounts,”

a. The Chapter 13 trustee shall set the trustee’s database so that the “first” post-petition mortgage payment comes due in the month following the month in which the petition is filed (or in the case of a conversion from another chapter, the month following the month the order of conversion is entered); and

b. The Chapter 13 trustee shall set up an additional creditor record for the mortgage payment for the month in which the petition is filed and a late fee, absent other order of the court, deemed to be 5% of the mortgage payment.

i. The trustee shall not populate this creditor record distribution until the proof of claim is filed.

ii. This claim will be paid pro rata as funds are available with secured and priority claims for whom no “equal monthly amount” is provided.

iii. If the debtor does not agree that a mortgage payment is due for the month in which the petition is filed, the debtor shall file an objection to this creditor record within 30 days of the initial date of confirmation of a plan.

iv. If the mortgagee does not agree that this creditor record set by the trustee accurately reflects the amount due to it for the first payment plus late fee, it shall file an objection to the creditor record within 30 days of the initial date of confirmation of a plan.

4. The debtor shall cure the pre-petition arrearage owed to the mortgagee through the Chapter 13 trustee as part of the plan payment.

5. The mortgagee’s proof of claim shall have an addendum which conforms to the “Addendum to Proof of Claim For Real Estate Claims” on the court’s website.

#### **C. Post-Confirmation changes or charges.**

1. It is not a violation of §362 for the mortgagee to notify the debtor of changes to the escrow account, interest rate, and the monthly payment due the mortgagee, nor is it a violation of §362 to deliver any notices in

accordance with this local rule.

2. If the loan documents provide for payment changes, including those due to interest rate adjustments or escrow account adjustments:

a. No later than 60 days prior to any payment change the mortgagee or the mortgagee's authorized agent shall file with the court and serve on the debtor, the debtor's counsel, and the Chapter 13 trustee a "Notice of Payment Change;" and

b. No later than 30 days after service of the "Notice of Payment Change," the debtor shall file a "Debtor's Response to Notice of Payment Change. If the debtor fails to file such response, the debtor is deemed to have accepted the payment change and the payment change will go into effect on the date provided in the "Notice of Payment Change."

3. If the mortgagee or the mortgagee's authorized agent, whose collateral has been retained by the debtor incurs attorney's fees and costs after confirmation of the debtor's Chapter 13 plan, which fees and costs are payable by the debtor under the terms of the loan documents:

a. The mortgagee or the mortgagee's authorized agent shall file and serve on the debtor, the debtor's counsel, and the Chapter 13 trustee a "Notice of Fees and Costs Incurred" no later than 30 days after such fees and costs are incurred.

b. No later than 30 days after service of the "Notice of Fees and Costs Incurred," the debtor shall file "Debtor's Response to Notice of Fees and Costs Incurred." If the debtor fails to file such response, the debtor shall be deemed to have accepted that the charge is owed, reasonable and non-dischargeable.

4. If authorized pursuant to the applicable debtor's response or the debtor does not respond timely, the Chapter 13 trustee is authorized to change the Chapter 13 plan payment without the necessity of the debtor filing a modified plan in order for the plan to comply with §§1322(a)(1) and 1322(d).

D. Modified Payment on a note secured by real estate. The debtor shall make all payments to the mortgagee through the Chapter 13 trustee as part of the Chapter 13 plan payment pursuant to the terms of the confirmed plan.